

CLAIM REJECTIONS - 35 USC § 102

ITEMS #3 AND 4

The Examiner stated in the Office Action...

"Claims 1-3,7,8,10,15,16,20,21 are rejected under 35 U.S.C. 102 (b) as being anticipated by U.S. Patent No. 4,809,449 to Solaja. The Solaja '449 patent discloses an attachment for securing to a skid steer loader (see col. 5, line 23). The attachment comprises a connecting frame (34, 38, 40) allowing for connection to the skid steer, a base (32) connected perpendicular to the connecting frame, a front surface (16, 20) connected to the end of the base opposite the connecting frame and vertically curved, and a support structure (30, 36) connected between the connecting frame and the base to provide strength to the attachment. The connecting frame has two support cutouts (46) at the bottom and a clamp mechanism (48) at the top. The front surface (16, 20) is perpendicular to the base (i.e. the longitudinal axis is perpendicular to the longitudinal axis of the base). The front surface includes a surface (20) for cutting. The front surface (e.g., at 20) is perpendicular to the ground."

The Examiner stated in the Office Action.:

"Regarding claims 2-3, 7, 10, 13: The curved front surface has a concave shape (defined from the center) and appears to have a radius of at least 2 feet. The front surface includes a straight, non-curved surface (20) at least 2 feet in length."

We have modified Claims 3, 10, 16 and 21 to refer to "radius ranges from 4 to 16 feet.."

See Modified Claims.

The Examiner stated in the Office Action.:

Regarding claims 15, 16, 20, 21: The attachment comprises two supporting cutouts (46) at the bottom and a clamp mechanism (44) at the top.

The Solaja '449 patent shows "eyes" (46) to be used for inserting pins. The Solaja '449 patent does not disclose "two supporting cutouts towards the bottom for insertion of the backhoe's latches" per the Claims and such that "the base is directed just above the backhoe's connecting point providing support when the attachment is connected to the backhoe." To clarify we have

added to Claims 15 and 20 the language "said supporting cutouts are oriented such that when the backhoe's latches are inserted the latches face the front surface."

We have modified Claims 15 and there 16 and Claims 20 and there 21 to refer to the orientation of said cutouts relative to the structure. See Modified Claims.

ITEM #5

The Examiner referred to the Desmarais Patent No. 5,819,444. The Examiner stated "Claims 1-13, 15-24 are reject under 35 USC 102 (b) as being anticipated by U.S. Patent No. 5,819,444 to Desmarais. The Desmarais '444 patent discloses an attachment for securing to a vehicle. The attachment comprises a connecting frame (50), a base (6), a curved front surface (2,4) and a support structure (42) connected between the connecting frame and the base. The curved front surface is movable to a plurality of shapes so that it can create a concave shape (Fig. 5), convex shape, an S-Shape (see e.g. Fig. 10) or a straight non-curved shape. The attachment includes supporting cutouts (48) and a clamp mechanism (18). The front surface includes a surface (52, 54) for cutting. Over time, contact with the ground will result in the cutting surface (52,54) becoming beveled, or worn."

We believe the Desmarais Patent '444 does not disclose a curved front surface. The Desmarais Patent '444 refers to "flat panels" for the main blade and wing blade. In addition, this Patent does not include a concave front surface. In (Paragraph 6, Line 40) the Patent '444 compares to other trucks fitted with "concave" blades and argues that not having a concave blade makes Patent '444 more efficient for snow removal.

We believe the Desmarais Patent '444 does not disclose "front surface includes a surface for cutting." Item (52 and 54) are "striker lips" according to (Paragraph 4, Line 56). In fact, the striker lips (52, 54) pivot "rearwardly when striking an object" (Paragraph 4, Line 63) suggesting they are not used for cutting. Item 18 is a "thrust plate" and not a "clamp mechanism." In addition, we do not believe the cutting surface is beveled. Each

element is required to be anticipated and reject under 35 USC 102 (b). Therefore, we believe these claims should not be rejected.

We have revised Claim #1 to clarify "said front surface includes a surface for cutting located at the top of the front surface at a distance furthest from the ground." Claim #8 is modified to "said front surface includes a beveled edge located at the bottom of the front surface closest to the ground." Claim #15 is modified to "said front surface includes a surface for cutting located at the top of the front surface at a distance furthest from the ground". Claim 20 is modified to "said front surface includes a beveled edge located at the top of the front surface."

CLAIM REJECTIONS - 35 USC SECTION 103

ITEM # 6 AND 7

The Examiner quoted Section 103(a) regarding the basis for obviousness rejection....

a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The Examiner provided Patent #4,808,027 Anderson as the reason for being unpatentable under 35 USC 103(a). This patent neither provides the suggestion of smoothing walls nor the expectation of success. The Anderson invention states that it is designed to (Paragraph 1, Line 67) "provide an improved compacting apparatus with greater ability to compact edge areas adjacent to vertical obstacles." There is no suggestion of using the device regarding the vertical walls only adjacent to the walls. Anderson 4,808,027 (Paragraph 3, Line 67) suggests use for "on ground-level surfaces." Use of this compaction device on walls with the "rocking motion" could be a significant safety concern that material on the swimming pool wall, above where the "rocker" is located would likely vibrate to the ground. Thus we believe there would not be an expectation of success in fact an expectation of failure is likely for smoothing walls with this device. In addition, the teeth on the Anderson 4,808,027 would not be expected to provide the smooth surface required and currently formed today by hand shovels.

Again, there is no mention of swimming pool construction in Patent 4,808,027 or construction of similar sites where the smoothness of the walls is critically important. There is also no mention of a method of smoothing walls of any type and in particular no mention of smoothing swimming pool walls. Therefore, we believe it is not obvious to one having ordinary skill in the art at the time the invention was made of the method for smoothing the walls of a swimming pool.

Before obviousness may be established, the Examiner is required to show that there is either a suggestion in the art to produce the claimed invention or a compelling motivation based on sound scientific principles. Logic compels that the suggestion or motivation be accompanied by a general knowledge of the existence of art-recognized techniques for carrying out the proposed invention. *Ex parte Kranz*, 19 U.S.P.Q.2d 1216, 1218 (B.P.A.I. 1990)

None of the art teaches smoothing of the walls of a swimming pool during swimming pool construction. The Examiner has not presented any evidence to support the conclusion that a worker in this art would have had any motivation to smooth the walls of a swimming pool during swimming pool construction. There is no mention of potential gunite savings, there is no mention of reducing labor costs for construction firms, there is no mention of improved smoothness of the walls, etc.

Therefore, we believe the claimed method #14 is not obvious and should not have been rejected under 35 U.S.C. 103 (a) as being unpatentable.

Revised Claims with Modifications

1. [Currently Amended] An attachment for securing to a skid steer loader having;
A connecting frame allowing for the connection to a skid steer loader;
a base connected perpendicular to said connecting frame and near the bottom so that the base is directed just above the skid steer loader's connecting point providing support when the attachment is connected to the skid steer loader;
a front surface perpendicular to said base, where in said front surface is shaped as a concave shape;
said front surface connected to the end of the base opposite the connecting frame and vertically such that the front surface extends above and below the base and said front surface includes a surface for cutting located at the top of the front surface at a distance furthest from the ground;~~said front surface includes a surface for cutting and~~
a support structure connected between said connecting frame and said base to provide strength to the attachment.
2. [Canceled].
3. [Currently Amended] An attachment according to claim 1, wherein said front surface is shaped as a concave shape with radius ranges from ~~2 to 25~~ 4 to 16 feet.
- 4 - 7. [Cancelled].
8. [Currently Amended] An attachment for securing to a skidsteer loader having;
A connecting frame with two supporting cutouts towards the bottom for allowing the insertion of skidsteer latches and a clamp mechanism attached toward the top for securing the attachment;
a base connected perpendicular to said connecting frame and near the bottom so that said base is directed just above the skid steer loader connecting point providing support when the attachment is connected to the skid steer loader;
a front surface perpendicular to said base;
said front surface connected to the end of said base opposite said connecting frame and vertically such that said front surface extends above and below said base and said front surface includes a beveled edge located at the bottom of the front surface closest to the ground;~~said front surface includes a beveled edge and~~

a support structure connected between the connecting frame and the base to provide strength to the attachment.

9. [Previously presented] An attachment according to claim 8, wherein said support structure consists of three perpendicular supports.

10. [Currently amended] An attachment according to claim 8, wherein said front surface is shaped as a concave shape with radius ranges from ~~2 to 244~~ to 16 feet.

11. [Currently amended] An attachment according to claim 8, wherein said front surface is shaped as a convex shape with radius ranges from ~~2 to 244~~ to 16 feet.

12-13. [Canceled].

14. [Original] A method for smoothing the walls of a swimming pool during the construction of a swimming pool comprising the steps of:

a. connecting a vehicle with an attachment having a connecting frame, a base and a curved front surface with an edge designed for cutting,

b. transporting the attachment to the swimming pool wall,

c. raising or lowering the attachment while contacting the wall surface with the curved front surface of the attachment to smooth the walls,

d. collecting the dirt and other items at the bottom of the swimming pool or spreading the dirt and other items along the bottom of the pool by utilizing the attachment and

e. repeating the steps above as necessary.

15. [Currently Amended] An attachment for securing to a backhoe having;

A connecting frame with two supporting cutouts towards the bottom for allowing the insertion of a backhoe's latches and a clamp mechanism attached toward the top for securing the attachment;

a base connected perpendicular to said connecting frame and near the bottom so that the base is directed just above the backhoe's connecting point providing support when the attachment is connected to the backhoe;

a front surface perpendicular to the ground;

said supporting cutouts are oriented such that when the backhoe's latches are inserted the latches face the front surface;

said front surface connected to the end of the base opposite the connecting frame and vertically such that the front surface extends above and below the base and said front surface includes a surface for cutting located at the top of the front surface at a distance furthest from the ground;~~said front surface includes a surface for cutting and~~

a support structure connected between said connecting frame and said base to provide strength to the attachment.

16. [Currently Amended] An attachment according to claim 15, wherein said front surface is shaped as a concave shape with radius ranges from ~~2 to 244~~ to 16 feet.

17. [Canceled].

18. [Canceled].

19. [Canceled].

20. [Currently Amended] An attachment for securing to a powered excavator having;
a connecting frame with two supporting cutouts towards the bottom for allowing the insertion of a powered excavator's latches and a clamp mechanism attached toward the top for securing the attachment;

a base connected perpendicular to said connecting frame and near the bottom so that the base is directed just above the powered excavator's connecting point providing support when the attachment is connected to the powered excavator;

a front surface perpendicular to the ground;

said supporting cutouts are oriented such that when the backhoe's latches are inserted the latches face the front surface;

said front surface connected to the end of the base opposite the connecting frame and vertically such that the front surface extends above and below the base and said front surface includes a beveled edge located at the top of the front surface; and

a support structure connected between said connecting frame and said base to provide strength to the attachment.

21. [Currently Amended] An attachment according to claim 20, wherein said front surface is shaped as a concave shape with radius ranges from ~~2 to 244~~ to 16 feet.

22. [Canceled].

23. [Canceled].

24. [Canceled].